

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR20-111-JCC
)	
Plaintiff,)	
)	DEFENDANT'S DISPOSITION
v.)	MEMORANDUM
)	
ISAIAH THOMAS WILLOUGHBY,)	
)	
Defendant.)	

Isaiah Willoughby submits this memorandum in support of the disposition hearing set for December 1, 2022. At that hearing, Mr. Willoughby will admit all of the violations alleged by the Probation Department, which include:

1. Using alcohol on or about July 14, 2022.
2. Failing to submit to drug testing on the following dates:
 - June 30, 2022
 - July 6, 2022
 - July 25, 2022
 - August 12, 2022
 - August 16, 2022
3. Failing to obtain a substance use disorder assessment as instructed since April 26, 2022.
4. Failing to pay towards restitution as instructed since June 30, 2022.
5. Failing to report and reside at an approved residence since August 22, 2022.
6. Leaving the federal judicial district, the Western District of Washington, without prior permission from the probation officer, on or about October 4, 2022.

1 Mr. Willoughby respectfully recommends a sentence of time-served
2 (approximately 60 days) with 31 months of supervised release, including a special
3 condition that he be placed at the RRC for a period up to six months. The Probation
4 Department argues that a further term of confinement through the holidays is necessary
5 so that Mr. Willoughby can come to grips with his potential substance abuse and mental
6 health issues. However, an additional term of custody would not achieve that goal.
7 Instead, a structured environment, such as the RRC, would provide supervision,
8 support, and monitoring that would assist Mr. Willoughby in his transition from
9 custody to the community.

10 The Probation Department recommends both an RRC placement and GPS
11 monitoring while he is at the RRC. The defense suggests that this level of monitoring is
12 unnecessary. If the Court is inclined to impose location monitoring, the defense
13 recommends that it start *after* Mr. Willoughby is released from the RRC to provide
14 monitoring when he transitions out of the RRC.

15 **I. BACKGROUND**

16 Following Mr. Willoughby's guilty plea to Conspiracy to Commit Arson, this
17 Court sentenced him to 24 months of imprisonment and three years of supervised
18 release. Dkt. 84. Mr. Willoughby started this term of supervised release on March 29,
19 2022.

20 The Bureau of Prisons did not grant Mr. Willoughby any prerelease time in the
21 RRC. He was released homeless from prison and showed up at the Probation
22 Department with no housing. Luckily, his brother was able to provide him space in a
23 storage room in his barbershop. The barbershop, located in a commercial strip mall, had
24 a small kitchenette and a space for a mattress, but it was still less than an ideal housing
25 placement.
26

1 Mr. Willoughby is an ambitious man who values employment. Upon release
2 from prison, he found employment at Synergy LLC in early June. He initially worked
3 through a temporary placement agency, but he was hired directly by Synergy in early
4 July due to his positive employment record. After a few weeks, Mr. Willoughby was
5 laid off due to the company's financial issues. Mr. Willoughby later obtained
6 employment through Total Success Staffing, working as a caterer at the Amazon
7 headquarters in downtown Seattle.

8 As outlined in the Probation Department's violation memos and
9 recommendation to the Court, Mr. Willoughby has chafed against supervision. He
10 missed UA testing because he was concerned about missing work. When he was
11 released, he asked to do UA tests at the Seattle courthouse. However, the job he
12 eventually found was in Kent, so he was concerned about missing work hours for UA
13 testing. He worked from 7:30 am to 4:30 pm, which overlaps with the testing times for
14 UAs at the Probation Department. After missing a UA, he spoke with his probation
15 officer, who informed him that he could test in Tukwilla. While the bus made it
16 possible to both test and get to work, it was a very tight schedule. Although
17 Mr. Willoughby missed the tests outlined in the violation report, he also appeared for
18 five UAs while on supervised release, four of which were negative for drugs/alcohol
19 and one which was positive for alcohol.

20 The Probation Department memo outlines some of the issues that
21 Mr. Willoughby had getting mental health and chemical dependency assessments. He
22 obtained a mental health assessment but did not complete a chemical dependency
23 assessment. To his credit, Mr. Willoughby made efforts to get the assessment. He
24 initially scheduled a SUD assessment at STOP in Tacoma. While STOP was not one of
25 the providers recommended by the Probation Department (because they don't take
26 Apple Care insurance), Mr. Willoughby chose this agency at the suggestion of his aunt,

1 who runs a clean and sober transition home in Tacoma. His appointment was scheduled
2 for July 2, 2022, in Tacoma. However, he eventually changed the appointment to
3 July 26, 2022 at the STOP location in Kent. Mr. Willoughby then scheduled an SUD
4 assessment at Sound for August 16, 2022. Mr. Willoughby made arrangements to take
5 the day off from work so he could do the telehealth assessment. However, the day
6 before the appointment, the provider notified him that he needed to reschedule because
7 the COVID rules that allowed for telehealth appointments for SUD assessments had
8 expired. The provider offered a new date for an in-person appointment. Mr. Willoughby
9 was frustrated and responded by text, "Who gave you permission to choose this day and
10 time for the assessment." The provider offered alternative dates but Mr. Willoughby did
11 not respond and missed the appointment. However, Mr. Willoughby went back to
12 STOP to schedule a SUD. The appointment was set for August 28, 2022. Exhibit 1
13 (STOP Letter). Admittedly, Mr. Willoughby did not make it to this appointment either.
14 By this time, he had stopped communicating with his probation officer.

15 Mr. Willoughby admits he failed to make sufficient payments toward restitution.
16 Mr. Willoughby has only been out of custody for a matter of months. His jobs, obtained
17 through temp agencies, do not involve skilled labor and likely pay only slightly more
18 than minimum wage. While he could have paid more, he was still struggling
19 financially.

20 Finally, Mr. Willoughby was arrested in Las Vegas. He did not have permission
21 to travel and, by that time, he was on warrant status. To be clear, though, he had not
22 moved to Las Vegas; he was there for a short trip.

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II. A TERM OF TIME-SERVED (ABOUT 60 DAYS) WITH A SPECIAL CONDITION THAT INCLUDES A LENGTHY RRC PLACEMENT SERVES THE REHABILITATIVE AND TRANSITIONAL GOALS OF SUPERVISED RELEASE.

“Supervised release fulfills rehabilitative ends, distinct from those served by incarceration.” *United States v. Johnson*, 529 U.S. 53, 59 (2000). For that reason, 18 U.S.C. § 3583(c) requires Courts to consider different factors at a revocation hearing than at the original sentencing proceeding. Specifically, when determining the appropriate sentence for violation of supervised release, Courts may not consider “the seriousness of the offense,” “the need to promote respect for the law,” punishment, the kinds of sentences available, or the need to pay restitution. *See United States v. Miquel*, 444 F.3d 1173, 1181 (9th Cir. 2006). It also is reversible error to “impose or lengthen a prison term in order to promote an offender’s rehabilitation.” *United States v. Grant*, 664 F.3d 276 (9th Cir. 2011). Rather, the Court should choose a sentence that furthers the overriding purpose of supervised release, “to assist individuals in their transition to community life.” *Johnson*, 529 U.S. at 59.

Here, the rehabilitative goals of supervised release are best met by a time-served sentence with an RRC placement. Mr. Willoughby has already spent nearly 60 days in custody. Assuming an RRC condition is imposed, he would remain in custody until a bed date can be arranged through the Probation Department. He has gotten the message that he needs to be more cooperative with the Probation Department and comply with conditions of release. This is not a case where Mr. Willoughby was committing new crimes while on supervised release. The term he has already served, combined with a lengthy RRC placement, will impress upon him the importance of compliance with conditions.

A. The characteristics of the defendant (18 U.S.C. § 3553(a)(1)).

In its sentencing recommendation from last year, the Probation Department aptly stated, “Mr. Willoughby’s personal history is complex, riddled with both significant

1 trauma and strong support, poor decision-making and compelling ambition.” Probation
2 Recommendation at 3. Mr. Willoughby’s childhood background was particularly
3 chaotic and difficult. He was born to addicted parents and his first interaction with
4 Child Protective Services occurred when he was approximately two years old. His next
5 several years were spent in various households; at times with his grandmother, at times
6 with his mother, and at times in one of many different foster homes. During his early
7 childhood, he was placed in 26 different foster homes. There were many custody battles
8 over Mr. Willoughby and his brother, and it appears that he was often neglected, left
9 alone, and uncared for. Guardian ad litem reports indicate that Mr. Willoughby
10 struggled with poor attachment, instability, developmental delay, and behavioral
11 challenges. Eventually, he was adopted into a loving home with his siblings.

12 Despite his difficult childhood, Mr. Willoughby is an optimistic and ambitious
13 person. He does not want others, especially the criminal legal system, to label him as a
14 troubled Black man from a dysfunctional family and a broken foster care system. He
15 frankly does not believe he needs mental health treatment, and he resists the suggestion
16 that he has an alcohol problem. To him, it is a personal criticism to suggest that he
17 needs treatment. He sees himself as a personable, smart, and ambitious man. While it’s
18 possible that he lacks personal insight, it is only because he believes he is doing fine,
19 and he wants to focus on his own personal goals—getting a well-paying job and
20 working on social justice issues.

21 The Probation Department’s Recommendation recounts, in detail, all of
22 Mr. Willoughby’s prior criminal history. While Mr. Willoughby is not proud of his
23 criminal history, this Court should keep in mind that, apart from the underlying Arson
24 conviction, his criminal history consists of only misdemeanor convictions, the last of
25 which took place in 2018. Between 2018 and the commission of the Arson in the
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1 summer of 2020, he established a solid employment history, continued his education at
 2 several local colleges, and in 2019 ran for Seattle City Council.

3 **B. To deter criminal conduct, protect the public from further crimes,**
 4 **and provide the defendant with needed treatment (18 U.S.C.**
 5 **§ 3553(a)(2)(B)–(D)).**

6 The Probation Department argues that Mr. Willoughby “is in need of mental
 7 health and substance use disorder services.” Recommendation at 4. It may be true that
 8 Mr. Willoughby would benefit from SUD treatment, although he likely disagrees with
 9 that assessment. Nonetheless, treatment is best provided in communities, not in prisons.
 10 *Johnson*, 529 U.S. at 60 (“Supervised release, unlike incarceration, provides individuals
 with post-confinement assistance.”).

11 A term of custody is not going to convince Mr. Willoughby that he actually does
 12 have substance abuse or mental health issues. A term of custody or some other punitive
 13 sanction is unnecessary to deter Mr. Willoughby from future violations. Additional
 14 imprisonment does not produce additional deterrence:

15 [R]esearch does not show that the aversive experience of receiving
 16 correctional sanctions greatly inhibits subsequent criminal behavior.
 17 Moreover, a significant portion of the evidence points in the opposite
 18 direction—such sanctions may increase the likelihood of recidivism. The
 19 theory of specific deterrence inherent in the politically popular and
 20 intuitively appealing view that harsher treatment of offenders dissuades
 them from further criminal behavior is thus not consistent with the
 preponderance of available evidence.

21 Mark W. Lipsey and Francis T. Cullen, *The Effectiveness of Correctional*
 22 *Rehabilitation: A Review of Systematic Reviews* 3 Ann. Rev. L. Soc. Sci. 297, 302
 23 (2007). *See also* Roger Warren, National Center for State Courts, *Evidence Based*
 24 *Practice to Reduce Recidivism: Implications for State Judiciaries* (2007) (“The research
 25 evidence is unequivocal that incarceration does not reduce offender recidivism....
 26 Incarceration actually results in slightly increased rates of offender recidivism.”).

1 The defense appreciates that Mr. Willoughby's criminal history appears to
 2 involve alcohol-related offenses. However, any such needs will not be addressed in a
 3 prison. Instead, release to the RRC would provide a structured and monitored transition
 4 plan.

5 **C. This Court should not defer to the statement by the Sentencing**
 6 **Commission (18 U.S.C. § 3553 (a)(5)).**

7 The Probation Department's recommendation is anchored by advisory range set
 8 forth in the Sentencing Guideline policy statement. The Sentencing Commission's
 9 policy statements deserve no deference by this Court. The Sentencing Commission has
 10 never promulgated guidelines for supervised release violations. *See* USSG, Chapter 7,
 11 Part A. Instead, the Commission simply created policy statements that, even before
 12 *Booker v. Washington*, 543 U.S. 220 (2005), were not binding on Courts. These policy
 13 statements contain no system of adjustment or departures to account for differing
 14 violations. They do not account for an offender's acceptance of responsibility, or lack
 15 thereof. They are not based on an empirical study of sentences actually imposed by
 16 district court judges. The guideline chart for revocation sentences has never been
 17 amended since its first publication in 1990. The policy statement fails to consider the
 18 disruptive impact a custodial sentence will have on people's lives.

19 Ultimately, when sentencing a defendant for a supervised release violation, this
 20 Court must consider the 18 U.S.C. § 3553(a) factors and impose a sentence that is
 21 "sufficient, but not greater than necessary" to comply with the purposes of sentencing.
 22 *See United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009). The policy
 23 statement range is excessive in this case. An additional three months in custody will do
 24 nothing to address the needs of Mr. Willoughby or protect the community. Sitting in jail
 25 for an additional three months will not convince Mr. Willoughby he needs treatment.
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1 **III. CONCLUSION**

2 Mr. Willoughby respectfully asks the Court to impose a time-served sentence to
3 be followed by a six-month RRC placement. The violations before the Court do not
4 present such a threat to the community that additional incarceration is warranted. A
5 sentence of time-served and release to the RRC best accomplishes the goal of
6 “assist[ing Mr. Willoughby] in [his] transition to community life.” *Johnson*, 529 U.S. at
7 60.

8 DATED this 23rd day of November 2022.

9 Respectfully submitted,

10 *s/ Dennis Carroll*

11 Assistant Federal Public Defender

12 Attorney for Isaiah Willoughby